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LETTER FROM RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
REGARDING APPLICATION OF DIRECT EXPOSURE CRITERIA FOR RECREATIONAL USE  
SITES NS NEWPORT RI  
1/19/2007  
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



## RHODE ISLAND

### DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

January 19, 2007

Robert G Schirmer  
Environmental Restoration  
Facilities Engineering Command, Mid-Atlantic  
Naval Facilities Engineering Command  
9742 Maryland Avenue  
Norfolk, VA 23511-3095

RE: Application of Direct Exposure Criteria for Recreational Use Sites Naval Station Newport, Newport Rhode Island.

Dear Mr. Schirmer,

The Rhode Island Department of Environmental Management, Office of Waste Management (RIDEM) received your letter regarding the application of Residential and Industrial/Commercial Standards to sites at Naval Station Newport in December 2006. As you are aware, Residential Activity is defined in Section 3.58 of the Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases as amended February 2004. The definition states that:

Residential Activity shall mean any activity related to (1) residence or dwelling, including but not limited to a house, apartment, or condominium, or (2) school, hospital, day care center, playground or unrestricted outdoor recreational area.

Industrial Commercial Activity is defined under Section 3.34 of the above-cited regulations. The definition states that:

Industrial Commercial Activity shall mean any activity related to the commercial production, distribution, manufacture or sale of goods or services, or any other related activity as defined by this Section including activities related to out door recreational sites with restrictions in place to limit potential exposure.

As the Department has steadfastly maintained, it is stated in the above regulations that playgrounds or unrestricted outdoor recreational activates are considered residential activities. At the Old Fire Fighter Training Area, the Navy initially stated that they wanted unrestricted outdoor recreational use of Katy Field, which contained a playground, picnic area and a playing field. Under this scenario, please be advised that the residential criteria would be applicable.

It has come to my attention recently that the Navy inquired as to whether it was possible to place restrictions or institutional controls on the aforementioned property for

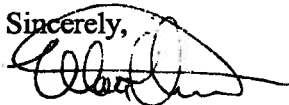
recreational use to limit potential exposure as defined in Section 3.34. This approach may be amenable to the Department in certain limited situations, but the recreational restrictions in place must be verified by the Navy, through formal risk analysis, to be consistent and compatible with an Industrial/Commercial risk scenario. Specifically, if standards other than Residential are to be considered for recreational areas as outlined in your letter, the burden of proof is on the Navy. That is, it must be reasonably proven to the Department that whatever restrictions and institutional controls are in place are protective under all applicable exposure scenarios given the standard applied.

Standards other than residential will only be considered by the Department if it can be proven that by placing an institutional control on a property, and ensuring its proper implementation and conducting the applicable reporting requirements, the applicable standard it is protective under a recreational scenario. Such a course of action would also only be considered by the Department if, as with all remedial actions, RIDEM has the authority to take enforcement actions or require additional investigation and/or remedial activities if the restrictions are not maintained or the use of the property changes.

In regards to RIDEM's regulatory role and our authority on military bases to either ensure that a restriction is maintained and/or take enforcement action if it is not, the Department has not received a satisfactory response in writing to date. Please be advised that the Department will be very reluctant to enter into restrictions on properties until assurances are given by the Navy that we have the authority to ensure that such restrictions are maintained. The Department is amenable to various avenues to address this issue including clearly outlining our regulatory authority with respect to restrictions or institutional controls through a Memorandum of Understanding or modifying the Federal Facilities Agreement, if applicable.

We look forward to your response. If you have any questions please contact Paul Kulpa at (401) 222-2797, extension 7111, or myself at extension 7141.

Sincerely,



Matthew D. DeStefano  
Supervising Engineer  
Office of Waste Management

cc: Leo Hellested, DEM OWM  
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Kymberlee Keckler, EPA Region I